

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NETSPHERE, INC.,	§
MANILA INDUSTRIES, INC., and	§
MUNISH KRISHAN,	§
Plaintiffs.	§
	§ Civil Action No. 3-09CV0988-F
v.	§
	§
JEFFREY BARON, and	§
ONDOVA LIMITED COMPANY,	§
Defendants.	§

**POST TRIAL BRIEF:
SPECIFIC EVIDENCE BASED DEFENSES**

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, and makes this post trial briefing, setting out a summary of evidence based defenses based on the ‘evidence’ admitted by the Court:

➤ **Pronske and Patel**

- In his ‘claim’ affidavit Pronske swears “There are no engagement agreements relating to the representation”. However, as a fiduciary, an attorney has an ethical obligation to have an agreement with their client, see e.g., *Goffney*, below.
- Pronske Swears “True and correct copies of ALL of my invoices relating to the Representation are attached hereto as Exhibit ‘A’ ”. However, the only invoices in Exhibit A are from February 2011. Pursuant to the ‘claim’ affidavit, there was no contract, and no invoice was provided until over a year and a half after the representation began (over six months after the representation ended).

- *Goffney v. Rabson*, 56 S.W.3d 186, 193 fn. 5 (Tex.App.- Houston [14th Dist.] 2001, pet. denied) (failure to reduce a fee agreement to writing is an ethical violation, failure to provide billing statements is an ethical violation); *Jackson Law Office, P.C. v. Chappell*, 37 S.W.3d 15, 22-23 (Tex.App.---Tyler 2000, pet. denied)(same); *Burgin v. Godwin*, 167 S.W.2d 614, 619 (Tex.Civ.App.-- Amarillo 1942,writ ref'd w.o.m)(ethical duty to keep client informed as the exact status brought about by the contractual relationship); *Burrow v. Arce*, 997 S.W.2d 229, 241 (Tex. 1999) (Fee forfeiture is remedy for attorney's clear violation of their ethical duty).

- Pronske's prior testimony established he was paid a \$75,000.00 payment up front. Per his own evidence, no contrary billing was sent out until February, 2011--after this receivership and subsequent to his testimony.

➤ **Carrington, Coleman, Sloman & Blumenthal, LLP**

- Affidavit expressly not based on personal knowledge.
- No contract initially provided. 'Draft' contract signed with Ondova only.

➤ **Aldous Law Firm / Rasansky Law Firm (joint venture)**

- **Resolved in global settlement.**

➤ **Schurig Jetel Beckett Tackett**

- Does not segregate billing.
- **Settled and paid as part of global settlement agreement** as part of the supplemental settlement. Contract was entered after Shurig represented Jeff, and therefore by law must be presumed invalid. *Archer v. Griffith*, 390

S.W.2d 735 (Tex. 1964) (“There is a presumption of unfairness or invalidity attaching to the contract, and the burden of showing its fairness and reasonableness is on the attorney”).

- Comparing contract terms and billing statement shows billing beyond Scope of work authorized “advice and consultation on administrative legal and tax issues associated with the foreign trusts” . Contract construed against drafter & fiduciary Schurig, and, the (i).. (vi) specifications are construed as specifications of the “advice and consultation on administrative legal and tax issues associated with the foreign trusts”.
- Schurig admits she represented Mr. Baron beginning “in October 2005” (in a joint representation with Mr. Krishan). #1 Schurig was conflicted and could not ethically represent Baron in the present litigation or settlement. #2 As a matter of long established Texas law, when an attorney currently representing a client enters into a new contract or fee arrangement, the agreement is, as a matter of law, presumed to be invalid. *See Archer*, above.
- Asiatrust is a proxy of Schurig, and is not in any way controlled by Jeff Baron. Asiatrust has itself filed claims against Baron. **The amount claimed from Baron is only \$1,331.50.**

➤ **Powers and Taylor**

- Were paid in full on hourly portion (in fact, *they* owe \$7,500.00 to Jeff per their own paperwork), and lost the lawsuit they sued on. **No money due pursuant to the fee contract they have provided the Court**, as they did not

meet the contingency condition in their contract.

- Admits in own ‘evidence’ that they are simply making up their fee demand, and that it is not based on any actual contract term. Powers and Taylor sued to recover money due from the use of PhoneCards.com. Powers and Taylor failed in any way to recover on that claim. The settlement required Jeff to give up half ownership of the PhoneCards.com, and give up all the money he claimed was due him with respect to PhoneCards.com.
- The attorneys’ own evidence shows that there was no billing for the now claimed contingency amount when the settlement was executed in August, 2010, or the next month in September 2010, or the next month in October 2010, or ever. This **new amount claimed**, pursuant to the lawyers’ own evidence, was made for the receivership ‘proceedings’.
- The attorneys’ admit their fees were limited (**by agreement**) to a maximum of \$10,000 per month. They admit they exceeded that limit and seem to want this Court to have them paid anyhow. Notably, that additional time now claimed does not appear on the attorney’s actual billing records they themselves submitted. Per the firm’s billing records, ie. per their own evidence, Jeff Baron is owed a \$7,500.00 retainer refund.

➤ **Gary G. Lyon**

- Lyon’s own billing evidence (All the statements prior to September) prove that Lyon’s fixed hourly rate was \$40.00 per hour. He clearly billed at that rate. Then, without any explanation, a new billing rate appears as of

September with almost ten fold higher at \$300.00 per hour.

- Lyon swore in his affidavit that his fees were “fixed at an hourly rate”. It is undisputable **that his hourly rate was \$40.00 per hour.** This is established by his statements for May, 2010, June 2010, July 2010 and August 2010. Then, in September, **contrary to Lyon’s sworn statement of a “fixed .. hourly rate”**, Lyon attempts to unilaterally charge a fee that is almost ten times higher than his fixed hourly rate. What happened in September ? Lyon’s co-counsel Pronske, began his ‘scorched earth’ policy against Jeff, testified to in the FRAP 8(1) hearing held on January 4, 2011.
- Lyon is not licensed in Texas, did not comply with disciplinary disclosure rules. Per Texas law cannot charge fee for Texas state law work. (For example, the billed for work includes “appearance before Dallas County District Court”).
- Testified to a substantially lower bill in prior proceedings in this Court.

➤ **Dean Ferguson**

- In his hearing testimony admitted he was paid \$22,000.00. Admits he agreed to give flat rate in August. At page 67 (1/4/11 hearing) “The initial retainer was five thousand dollars, and then there was an agreement to pay additional amounts of money for August. **I agreed to reduce -- give a flat rate for August**”).
- In his affidavit ‘claim’ Dean Ferguson swears there was an agreed upon rate of \$300.00. However, **in his sworn testimony** on January 4, 2011, **Dean Ferguson said there was “not a set agreement” for the \$300.00** and he told Jeff “we needed to reach on an agreement as to the fee”.

- Dean Ferguson swears his representation began on July 22, 2010 and the unsigned engagement contract he proffers is dated a week after his representation began. The contract is notably unsigned. Even if it had been signed, **as a matter of Texas law, there is a presumption of invalidity attaching to the contract terms Ferguson claims.** *Archer v. Griffith*, 390 S.W.2d 735 (Tex. 1964).

➤ **Bickel & Brewer**

- **Arbitration clause.** I.e., Jeff is entitled –by contract– to have the claim heard by arbitration, and not ‘summary proceedings’.
- Billing does not segregate work, ie., Jeff vs. Ondova.
- Includes billing for collection

➤ **Robert J. Garrey**

- Per his own affidavit he worked 2 weeks on a \$8500 per month agreed contract.
- Previously made a \$1 Million dollar claim.

➤ **Hohmann, Taube & Summers, LLP**

- **Settled and paid as part of global settlement agreement** as part of the supplemental settlement.
- Work clearly duplicative of other billings.

➤ **Michael B. Nelson, Inc.**

- Submitted contract appears to be a doctored forgery.
- Not licensed in Texas.

➤ **Mateer & Shaffer, LLP**

- Does not segregate billing.
- Work seems to be for Ondova.

➤ **Broome Law Firm, PLLC**

- **Arbitration Clause.**
- Contract limited to \$10,000.00 per month (by own evidence), unless there is express written modification that month. No such modifications were provided (per Broome's own evidence).
- Broome's Evidence claims to include all contract agreements and modifications.
- No authorization shown to exceed the \$10,000.00 per month limit.
- Received \$18,000 and worked 2.5 months.

➤ **Fee, Smith, Sharp & Vitullo, LLP**

- **Arbitration Clause.**
- Per own evidence, signed only in capacity of Ondova (per their own evidence).
- Work not segregated, seems work for Ondova. Ie., bankruptcy issue.

➤ **Hitchcock Evert, LLP**

- **Settled and paid as part of global settlement agreement** as part of the supplemental settlement.

➤ **Reyna Hinds & Crandall**

- Receiver did not produce affidavit for the undersigned counsel to review.

➤ **Three Key Overall Issues**

- There is clearly duplicative, unreasonable billing. However, evidence of such requires the opinion of an Expert and the Court would not allow Jeff to retain an expert to provide such evidence.
- Discovery and document production such as requests for the attorneys demand letters and responses and sufficient time to investigate and respond is required to properly defend the claims. These were requested but not provided.
- These ‘claims’ are from almost exclusively non-diverse ‘claimants’ (the diverse are under \$75,000.00). Non-diversity means lack of Subject Matter jurisdiction over the claims. Similarly, no pleadings filed by the claimants or on the claims and thus no Subject Matter jurisdiction over the claims.

Respectfully submitted,

/s/ Gary N. Schepps

Gary N. Schepps
Texas State Bar No. 00791608
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(214) 210-5940 - Telephone
(214) 347-4031 - Facsimile
Email: legal@schepps.net
FOR JEFFREY BARON

CERTIFICATE OF SERVICE

This is to certify that the forgoing document was served this day on all parties who receive notification through the Court's electronic filing system.

/s/ Gary N. Schepps
Gary N. Schepps